

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLETCHER L. ESTES and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Oceana, VA

*Docket No. 98-2236; Submitted on the Record;
Issued March 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has a greater than 19 percent sensorineural hearing loss of the right ear for which he has received a schedule award.

On September 11, 1996 appellant, then a 60-year-old former federal employee, filed a claim for compensation alleging that his hearing loss was caused by his employment.¹

In support of his claim, appellant submitted a July 2, 1997 medical report from the employing establishment's doctor who stated that he had reviewed appellant's audiograms and found that appellant had a moderate bilateral high frequency hearing loss at the time of his separation from the U.S. Navy in 1976. The doctor then noted a modest change in appellant's hearing since he had entered the civil service.

On February 5, 1998 the Office of Workers' Compensation Programs referred appellant, his medical records and a statement of accepted facts to Dr. Charles Dennis, Board-certified in otolaryngology, for an audiologic and otologic evaluation.

In a medical report dated February 23, 1998, Dr. Dennis submitted results of a February 23, 1998 audiogram. The audiogram indicated that appellant demonstrated the following hearing thresholds at 500, 1,000, 2,000 and 3,000 cycles per second: 10, 10, 60 and 70 decibels respectively in the right ear; 5, 5, 25 and 55 decibels respectively in the left ear.

On March 19, 1998 the Office referred the medical record to the Office medical adviser.

On March 24, 1998 the Office medical adviser calculated, using the February 23, 1998 audiogram, that appellant had an 18.75 percent monaural right ear hearing loss and a 0 percent left ear hearing loss.

¹ Appellant retired on August 31, 1996.

On June 24, 1998 the Office granted appellant a schedule award for a 19 percent sensorineural hearing loss of the right ear.

The Board finds that appellant has no greater than a 19 percent permanent sensorineural right ear hearing loss, causally related to factors of his federal employment.

The compensation schedule of the Federal Employees' Compensation Act² specifies the number of weeks of compensation to be paid for permanent loss of use of various members of the body. The Act does not, however, specify the manner in which the percentage loss of a member is to be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.³ For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of table so that there may be uniform standards applicable to all claimants.⁴

The Office evaluates hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added together and averaged, and a "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.⁵ The binaural hearing loss, if any, is determined by first calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, the added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.⁶ The Board has concurred in the Office's adoption of this standard for evaluating hearing losses for scheduled compensation purposes.⁷

The Office medical adviser applied the Office's standardized procedures to the audiogram obtained on February 23, 1998. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second revealed losses of 10, 10, 60 and 70 respectively. These losses were totaled at 150 decibels and divided by 4 to arrive at an average hearing loss of 37.5 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 12.5 decibels, which was multiplied by 1.5 to arrive at an 18.75 percent monaural hearing loss for the right ear, which was rounded up to 19 percent.

² 5 U.S.C. § 8107.

³ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1987).

⁴ *Henry L. King*, 25 ECAB 39,44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

⁵ A.M.A., *Guides* (fourth edition 1993).

⁶ See also FECA Program Memorandum No. 272 (issued February 24, 1986).

⁷ See *Danniel C. Goings*, *supra* note 3.

The same procedure was employed for the decibel levels obtained for the left ear which resulted in a zero percent monaural loss in the left ear.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 24, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 10, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member